IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

THURSDAY, THE 18TH JANUARY 2007 / 28TH PAUSHA 1928

Crl.MC.No. 2848 of 2004(A)

PETITIONER:

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1. K.S.UMMER S/O.L KUNHAMMED KUTTY,
   KUNIYIL HOUSE, KUTTIADI AMSOM, THOMDIVOIL DESOM,
   VADAKARA TALUK, KOZHIKODE.

2. M.K.NAJEEB S/O. MOIDU HAJI,
   RESIDING AT DO.

3. NAJEEMUDHEEN S/O. MOIDU HAJI,
   RESIDING AT DO. DO.

4. FAZIL S/O. K.S.UMMER RESIDING AT DO. DO.

5. NAJMEL KADEKKACHALIL
   S/O. KUNJIYETTI, RESIDING AT DO. DO.

BY ADV. SRI.T.G.RAJENDRAN

RESPONDENTS: COMPLAINANT/STATE

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1. V.V.MUHAMMED RAFEEQ, S/O. MOOSA,
   VALIYAPARAMBATH, KUNNUMMEL AMSOM, VATTOLI DESOM,
   VADAKARA TALUK, KOZHIKODE.

2. SUB INSPECTOR OF POLICE, KUTTIADY.

3. STATE REP.BY PUBLIC PROSECUTOR,
   HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.GIKKU JACOB

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 18/01/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

Crl.M.C.No.2848 of 2004

Dated this the 18th day of January 2007

O R D E R

The petitioners are the accused in a prosecution under Sections 457 and 380 read with 34 I.P.C. The said proceedings has been initiated on the basis of a private complaint filed by the first respondent/complainant. The crux of the allegation is that the petitioners had trespassed into a building in the possession of the complainant. The petitioners seek quashing of the said proceedings on the ground that a decree for recovery of possession has since been secured by the first petitioner who claims to be the owner of the building.

2. The application is opposed by the learned counsel for the first respondent. Even the fact that a decree for recovery of possession has been granted may not be crucially relevant as the offences alleged are offences against possession primarily, contends the learned counsel for the first respondent . It is further submitted that the civil court's decree on the subject has not become final and a challenge is pending and the decree stands stayed.

3. The learned counsel for the petitioners, in these circumstances, only prays that the rights of the petitioners to claim discharge before the learned Magistrate may be directed to remain unaffected and this Criminal Miscellaneous Case may be disposed of. I am satisfied that the said request can be accepted. I do not express any opinion on merits. Accepting the request of the learned counsel for the petitioners, this Criminal Miscellaneous Case is dismissed, making it clear that the dismissal will not in any way affect the rights of the petitioners to raise all appropriate and relevant contentions before the learned Magistrate and to claim discharge/acquittal at the appropriate stage.

(R.BASANT, JUDGE)

jsr

R.BASANT, J

C.R.R.P.No.

ORDER

21ST DAY OF JULY 2006